

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 683 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

MANDAN @ SADHU SEVADAS

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Appearance:

PUBLIC PROSECUTOR for Petitioner

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 28/01/98

ORAL JUDGEMENT (Per Patel, J.)

State has preferred this appeal against the order of acquittal recorded by Assistant Sessions Judge, Junagadh in Sessions Case No. 39 of 1996 on 5.5.1997.

2. The respondent-accused was tried for offences punishable under section 363 (c) and 325 of the Indian

Penal Code on the allegation that four years prior to 17.10. 1995, the complainant's maternal uncle's son Rizwan aged about 12 years was kidnapped, a fracture was caused on his left hand and he was engaged for begging at different places. His name was given as Kalu Mandan. The complaint was initially registered at Mangrol Police Station which was forwarded to Okha Police Station for investigation. On completion of investigation, charge sheet came to be filed and the case was committed to the Court of Sessions on 22.2.1996. The accused pleaded not guilty and contended that he is entirely innocent.

3. It appears that the complainant Imthiyas Gulam Hussien disclosed before the Court that one of his friends conveyed information that Rizwan was seen begging at Okha. On receipt of this information, the complainant went to Okha Police Station and found that Rizwan was there and the person who kidnapped Rizwan was also there. It appears that in the police station, on inquiry, Rizwan stated that he was beaten and his left hand was fractured. In the cross examination, the complainant has stated that Rizwan used to come at any time and used to go at any time and in the past, and thrice such incident, i.e. leaving the house and staying away without conveying information, took place. In the cross examination, he has further admitted that Rizwan was mentally abnormal. Complaint was not given to the police though he was missing. He further stated that because of his mental condition he used to move with anyone. Even in Okha Police Station, when Rizwan was questioned, he was not answering correctly. One Atlaf Ibrahim, Exh.23, conveyed information to Hanifbhai that he has seen one boy begging with one "Bavaji", but in the cross examination he has stated that he has never seen the accused begging and he is seeing the accused for the first time. It is admitted by Gulam Hussien PW.4 Exh.16 and Mohammad Rafiq PW.5 that Rizwan was mentally abnormal. It appears that before the Court, no birth certificate or ration card was produced. It is also admitted that near relatives of Rizwan are not taking responsibility and many other relatives of Rizwan are staying at Mangrol. It is also not known where Rizwan was at the time when the case was being heard. It further appears that because of his mental abnormality, Rizwan was not in a position to give correct answers. This is the sum and substance of the prosecution case.

4. It is stated that the police has given the name of the accused and no one ascertained as to Rizwan was being engaged in begging or not. Learned Judge has come to the conclusion that considering the evidence, there is

nothing to show that the accused kidnapped Rizwan for the purpose of begging and there is no evidence and no one has seen Rizwan begging, but on the contrary evidence reveals that from the birth, Rizwan was lunatic and used to leave the house at any time. Learned Judge has also observed that in such case, there cannot be an eye witness but none is examined with a view to support the prosecution version. Merely because at the police station Rizwan was seen with the accused, a presumption cannot be drawn. Rizwan is not examined by the prosecution and the learned Judge, considering the evidence, has recorded an order of acquittal.

5. Having read the judgment and considered the evidence, we are in agreement with the learned Assistant Sessions Judge. We are, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" .... This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

6. At an earlier point of time, we pointed out that it is the duty of the State to protect the victim. It appears that no action has been taken in this case despite the fact that the police officers were aware that Rizwan is the person who can be said to be an abnormal person. Learned Judge had no opportunity to see the victim Rizwan. We hope that the State will take action in the matter at the earliest.

7. The appeal fails and stands dismissed accordingly.

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